IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.

S. B. CIVIL MISC. APPEAL NO. 599/1996

NANAG RAM & ORS
v
JAGDISH PRASAD & OTHERS

DATE OF JUDGMENT: 2nd MARCH, 2007.

Hon'ble Mr. Justice R. S. Chauhan

Mr. R.S. Rathore for the appellants.
Mr. Rishi Bhargava for the respondents.

By Court:

Having lost their elder son in an accident, the parents, the brother, the sister and the widowed wife and the minor child filed a claim petition before the Motor Accident Claims Tribunal, Jaipur District, Jaipur. Vide award dated 5th December, 1995, the learned Tribunal granted a compensation of Rs. 2 lacs alongwith an interest of 12% per annum to the appellants-claimants. Since the appellants are aggrieved by the meager amount of compensation they have filed the present appeal for enhancement of the award.

Briefly the facts of the case are that on 5.11.91 the deceased Ram Sahay was going by his motorcycle alongwith his younger brother from Jaipur to Sakar Kui. Just two kilometers after the Amer Police Station, a truck being driven rashly and negligently, came from the opposite side and collided with the motorcycle.

Consequently, while Ram Sahai expired, his younger brother sustained injuries on his body. At the time of his death, the deceased was 25 years old and was making a living by selling milk. According to the appellants he was earning Rs. 3,000/- per month. His family, consisting of old parents and younger brother and sisters, the wife and a minor child, was financially and emotionally dependent on him for their sustenance. Therefore, the claimants filed a claim petition before the learned Tribunal for a compensation of Rs. 26 lacs. In order to support their case they examined five witnesses and submitted eleven documents. After going through the oral and documentary evidence, as aforementioned, vide award dated 5.12.95, compensation of Rs. 2 lacs was granted to the claimants. Hence this appeal before this Court.

Mr. R.S. Rathore has raised three contentions before this Court. Firstly, that although the accident had taken place prior to the Second Schedule being attached to the Motor Vehicle Act, 1988 (henceforth to be referred to as 'the Act', for short), but the said Schedule had come into force prior to the passing of the impugned award. Therefore, the learned Tribunal should have used the Second Schedule as a binding guideline for assessing the loss of dependency. Moreover, according to the postmortem report (Ex.3), the deceased was 25 years old at the time of his death. Hence according to the Second Schedule a multiplier of 17 should have

been applied by the learned Tribunal. But, the learned Tribunal, without stating any reason, has applied a lower multiplier of 15. Thus a wrong multiplier has been applied. Secondly, that according to the two independent witnesses and according to the testimony of the father the deceased was earning Rs. 3,000/- per month. The said witnesses have not been demolished in their cross-examination by the respondents. Moreover, the respondents have not adduced any evidence to prove that the deceased was earning less than Rs. 3,000/- per month. Yet, in the absence of any evidence to the contrary, the learned Tribunal has wrongly concluded that the deceased was merely earning Rs. 1,500/- per month. Thirdly and lastly, that despite the fact that the aged parents have lost their young son, the wife has lost her husband, younger brother and sister have lost their elder brother, the learned Tlribunal has not granted any compensation in the category of love and affection. Hence the impugned award should be amended.

On the other hand, Mr. Rishi Bhargava, learned counsel for the respondents, has vehemently argued that although the widowed wife has filed the claim petition alongwith other claimants, she has not appeared in the witness box. Therefore, there is no evidence to prove that she was financially dependent on her husband. Secondly, since at the time of filing of the claim petition she was only 19 years old, she may have re-married and, therefore,

she is no longer dependent on the deceased husband. Thirdly, that considering the age of the father, who is 70 years old, the application of 15 as a multiplier is a just application. Lastly, that the learned Tribunal has justifiably granted a compensation of Rs. 2 lacs. Since the compensation on the whole is just and proper, it cannot be challenged on the ground that a particular amount has not been granted for a particular category such as 'love and affection'. According to the learned counsel, Rs. 2 lacs is a huge amount considering the fact that the award was passed in the year 1995.

We have heard both the learned counsels and have perused the impugned award.

A bare perusal of the record reveals that Soni Ram, the eldest son in the family had appeared in the witness box. Once he had appeared in the witness box and had testified about the financial condition and about the family's dependency on the deceased, it was not necessary for the wife of the deceased person to appear in the witness box. Considering the harsh realities of this country, where generally widows are not re-married, a judicial note can be taken and a reasonable presumption should be drawn that the wife was dependent on her husband during his life and she continues to be dependent on her in-laws family even after the death of her husband. The position of the widow in the Indian society is not a

secret. Generally, it is they who are abandoned by the family. Therefore, even if a person needs financial assistance or compensation then it is the widow and her own child. Therefore, the first contention raised by the learned counsel for the respondents is unacceptable.

Admittedly, the deceased was earning a living by selling milk. He was a person who was working in an unorganised sector where no documents with regard to earning are kept by the person. Neither the buyer nor the seller of the milk would maintain the record of the earnings. Thus, is is impractical to expect the laimants to produce any documents to support the claim about the earning capacity of the deceased person. But the fact that the deceased could maintain a motorcycle as far back as in the year 1991, when the motorcycle as a mode of transport was not kept by general publicand were an expensive proposition, clearly reveals that the deceased had a substantial earning capacity. The respondent have not produced any evidence to the contrary to say that the deceased was earning less than Rs. 3,000/- per month. Moreover, the appellants have produced two independent witnesses whose testimony has not been demolished. They testified that the deceased was earning Rs. 3,000/- per month. While concluding that the deceased was earning only 1,500/- per month, the learned Tribunal has not given any cogent reason for arriving at such a

conclusion. Therefore, such a conclusion is unsustainable.

In the case of General Manager, Kerala State Road Transport Corporation Vs. Susamma Thomas & Ors. (1994 ACJ 1) and in the case of Manju Devi & Anr. Vs. Musafir Paswan & Anr. (2005 ACJ 99), the Hon'ble Supreme Court has repeatedly held that the Tribunal should adhere to the multiplier system as enunciated in the Second Schedule. For, such a system lends a uniformity and certainty to the awards being passed by the learned Tribunals all over the country. Such a schedule also eliminates the possibility of arbitrariness in the awards being passed by the learned Tribunals. Therefore, the learned Tribunal should have followed the Second Schedule both in letter and in its spirit. In case the learned Tribunal wanted to deviate from the said Schedule, it must state its reason succinctly for doing so. However, in the present case the learned Tribunal has not given any reason for applying the lower multiplier of 15, whereas a multiplier of 17 should have been applied. Therefore, this court has no option but to apply a multiplier of 17 in the present case.

The loss of a son is an painful event in the life of anyone. A bare perusal of the claim petition also reveals that the deceased had atleast six minor brother and sisters, whom he left behind. Therefore, the learned Tribunal ought to have awarded some amount

to the appellants for the loss of "love and affection".

In the result, this appeal is allowed and the impugned award dated 5.12.1995 is modified as under:-

1. Loss of dependency 2000 x 17 x 12	**= 4,08,000**
2. Loss of love and affection 10,000	**= 10,000**
Total Rs.	**4,19,000**

This court is informed that Rs. 2 lacs have already been paid to the appellants. Therefore, the said amount shall be adjusted against the enhanced amount. The respondent No.3 is directed to pay the remaining amount alongwith an interest of 7.5% per annum from the date of filing of the claim petition till the date of realisation. The learned Tribunal is directed to recover the said amount from respondent No. 3and to pay the said amount to the claimants within a period of two months from the date of the receipt of the certified copy of the judgment.

(R.S. CHAUHAN) J.

MRG.